

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 15, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP1952

Cir. Ct. No. 2014CV21

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN ITS
INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE
PRIMESTAR-H FUND I TRUST,**

PLAINTIFF-RESPONDENT,

v.

JEFFREY W. ROOP AND LINDA L. ROOP,

DEFENDANTS-APPELLANTS,

**CITIBANK (SOUTH DAKOTA), NA AND ORTHOPEDIC SPORTS MEDICINE
SPEC.,**

DEFENDANTS.

APPEAL from a judgment of the circuit court for Door County:
PETER C. DILTZ, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Jeffrey and Linda Roop, pro se, appeal a summary judgment of foreclosure in favor of Wilmington Savings Fund Society, FSB (“Wilmington Savings”). We affirm.

¶2 On July 13, 2007, the Roops executed a note and mortgage naming Delta Funding Corporation as lender. The note and mortgage indicate that each may be transferred and assigned. The note states on its face that “[i]f more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. ... The Note Holder may enforce its rights under this Note against each person individually or against all of us together.”

¶3 An action was commenced for foreclosure and sale of the mortgaged premises based on the failure to make payments under the terms of the note and mortgage. The circuit court granted summary judgment and entered a judgment of foreclosure. The court denied the Roops’ motion for reconsideration, but vacated the judgment substituting Wilmington Savings as plaintiff. Following further briefing, the court entered an amended judgment substituting Wilmington Savings as plaintiff nunc pro tunc. The Roops now appeal.¹

¶4 We review summary judgments independently, utilizing the same methodology as the circuit court. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Summary judgment is appropriate when there

¹ The Roops’ reply brief fails to conform to the rules contained in WIS. STAT. RULE 809.19(8)(b) and (c), as it exceeds the word limitation. The Roops also fail to refer to the parties by name, rather than by party designation, as required by WIS. STAT. RULE 809.19(1)(i).

All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

is no issue regarding any material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).

¶5 The Roops argue the note does not name Wilmington Savings as the lender and substitution of Wilmington Savings as plaintiff contradicts the allegations of the complaint naming U.S. Bank as lender. Because there is no assignment of the note attached to the complaint, the Roops contend Wilmington Savings lacks standing to sue. However, an original note, rider and several note allonges² were submitted in the circuit court in support of summary judgment. The last note allonge was endorsed in blank. The circuit court correctly recognized that an instrument becomes payable to its bearer if endorsed in blank, and may be negotiated by transfer or possession alone until specially endorsed. *See* WIS. STAT. §§ 403.205(2); 401.201(2)(km)1. A possessor of an instrument payable to its bearer is a holder of the instrument and entitled to enforce its provisions. *See* WIS. STAT. § § 403.301, 403.205(2).

¶6 As current note holder, and mortgage owner as evidenced by assignments of mortgage in the circuit court record, Wilmington Savings had a legal interest in the debt under the note, secured by an interest in the Roops' property under the mortgage. It therefore had standing to pursue the remedy of foreclosure. *See* WIS. STAT. § 403.205(2). The circuit court properly exercised its discretion by granting the request to substitute Wilmington Savings as plaintiff.

² An allonge is a slip of paper attached to a negotiable instrument for the purpose of receiving an endorsement. *See PNC Bank, N.A. v. Bierbrauer*, 2013 WI App 11, ¶7 n.2, 346 Wis. 2d 1, 827 N.W.2d 124 (Ct. App. 2012). Here, the allonges endorsed the note from Delta Funding to CitiMortgage, Inc., to U.S. Bank, which executed the allonge endorsed in blank.

¶7 The circuit court also correctly found admissible Wilmington Savings's evidence in support of summary judgment. The note, note allonges, mortgage, assignments of mortgage, and associated documents were not offered in evidence to prove the truth of the matter asserted. *See* WIS. STAT. § 908.01(3). Rather, Wilmington Savings offered the documents to show the legal effect of each, and they do not constitute hearsay. The certified copies of public records and commercial paper documents submitted in this case were self-authenticating, as were the signatures evidencing the assignments and endorsements. *See* WIS. STAT. §§ 909.02(4), (9); 403.308(1).

¶8 To establish the amount of delinquency under the note, Wilmington Savings offered the payment ledger for the Roops' mortgage loan account. The computer-generated payment ledger does not meet the definition of hearsay. *See State v. Zivcic*, 229 Wis. 2d 119, 131, 598 N.W.2d 565 (Ct. App. 1999). The circuit court also properly found affiant Patricia Quattromani had sufficient personal knowledge regarding the accounting and loan documents offered to support the summary judgment motion, given her role as senior manager of Statebridge Company, the servicer of the loan for Wilmington Savings. Quattromani averred that Statebridge had responsibility for the accounting and other mortgage loan documents relating to the Roops' mortgage loan. Quattromani further averred she had personal knowledge of the procedures for creating and maintaining the loan documents prepared at or near the time of the transaction or event by a person with knowledge. Quattromani also stated the documents were prepared and maintained in the ordinary course of Statebridge's regularly conducted business activities. These averments were sufficient to show that Quattromani had the requisite personal knowledge and was qualified to testify as to the payment history and account information. *See* WIS. STAT. § 908.03(6).

¶9 The record demonstrates Wilmington Savings submitted sufficient documentary evidence to support a prima facie case for summary judgment. When a motion for summary judgment is properly supported, an adverse party may not rest upon the mere allegations or denials of the pleadings. WIS. STAT. § 802.08(3). The Roops were required, by affidavit or otherwise, to set forth specific facts showing a genuine issue for trial. *See id.* The Roops failed to create disputed issues of material fact, and Wilmington Savings was entitled to judgment as a matter of law.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

